

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

TERRY L. CHARLTON,)
)
Plaintiff,)
)
VS.) No. 1:04-1290
)
TENNESSEE DEPARTMENT OF)
CORRECTIONS, *et. al.*,)
)
Defendants.)

ORDER

Defendants Dr. Fred Cole (“Dr. Cole”) and Corrections Corporation of America (“CCA”) move to dismiss Plaintiff’s claims for damages under the Constitution of the State of Tennessee. In support, Defendants submit that the Tennessee Constitution does not create an implied private cause of action for damages against a state actor who violates a citizen’s state constitutional rights. Because that view of state law has been adopted by the Court of Appeals of Tennessee, the United States Court of Appeals for the Sixth Circuit, and this court, Defendants’ motions to dismiss [Dkt. ## 10, 29] Plaintiff’s claims for damages under the Tennessee Constitution are GRANTED, and those claims are DISMISSED WITH PREJUDICE.

Even though Congress has never said so, in limited circumstances, a person may recover money damages against a federal officer to redress a violation of the person’s federal

constitutional rights. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 67 (2001) (describing the “core holding” of *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971)). In contrast, the state and federal courts to have addressed the question have consistently declined to find an implied right of action for damages in the Tennessee Constitution for violations of state constitutional rights. *See, e.g., Lee v. Ladd*, 834 S.W.2d 323, 325 (Tenn. Ct. App. 1992) (noting the absence of any *Bivens*-type remedy under Tennessee law); *Cline v. Rogers*, 87 F.3d 176, 179 (6th Cir. 1996) (respecting *Ladd*’s interpretation of state law); *Pinnix v. Pollock*, 338 F. Supp. 885, 891 (W.D. Tenn. 2004) (same). This interpretation of state law has become settled, and the court finds no basis for departure in this case.

Accordingly, Defendants’ first two motions to dismiss [Dkt. ## 10, 29] are GRANTED, and, to the extent Plaintiff seeks damages for alleged violations of state constitutional rights, those claims are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE


DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 55 in case 1:04-CV-01290 was distributed by fax, mail, or direct printing on December 9, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT